FILE COPY

Office Supreme Court, U.S.
FILED
FEB 15 1933
CHARLES ELMORE CROP
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 492.

THE PEOPLE OF PORTO RICO,
Petitioner,

against

RUSSELL & Co., Sucesores, S. en C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al.*

MEMORANDUM REQUESTED BY MR. JUSTICE BRANDEIS OF CASES ON REMOVAL FROM THE INSULAR COURTS OF PORTO RICO TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

This court in *Garrozi* v. *Dastas*, 204 U. S. 64, considered the right of removal from the Insular District Court to the District Court of the United States for Porto Rico. There the proposition advanced was that want of jurisdiction in the Federal Court might be asserted "by the person who procured the removal, who resisted the effort to remand, and when the want of jurisdiction is only suggested after trial and final decree" (p. 72).

Mr. Justice White said, at page 73:

> "We conclude, therefore, that where a case is removed from the local Porto Rican court to the United States court, over which case the latter court would have had jurisdiction as to all the parties impleaded if the case had been there originally brought, even though the removal was irregular, the party who caused the removal cannot be heard after judgment against him to assert that the United States court was wanting in jurisdiction solely on the ground that the case was erroneously removed."

The Circuit Court of Appeals for the First Circuit passed upon the question of removal in *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500, 502, 505, which was referred to on the argument and in respondents' brief at page 21. The court at page 504 referred to *Garrozi* v. *Dastas, supra.* Certiorari was sought in this case upon the ground, among others, that that suit which had been removed was not removable because

> "(a) The People of Porto Rico is not a citizen of any sovereign power and has no domicile whatsoever, and (b) The defendant, Fortuna Estates, was then domiciled in Porto Rico" (Petition for certiorari, October Term, 1921, No. 969, pp. 3, 4).

This application for certiorari was denied by this court in 259 U. S. 587.

The right of removal by the same respondents who are respondents here was sustained by the Circuit Court of Appeals for the First Circuit in *Goico* v. *Russell & Co.,* 4 Fed. (2d) 7, the court relying upon its previous ruling in *People of Porto Rico* v. *Fortuna Estates, supra.* This case is cited in our brief at page 21.

The same Circuit Court of Appeals sustained the right of removal in a case brought by the People of Porto Rico in *People of Porto Rico* v. *Livingston*, 47 Fed. (2d) 712. The court there referred to its previous decision in *People of Porto Rico* v. *Fortuna Estates, supra.* The People of Porto Rico petitioned for certiorari in the Livingston case on this ground among others and the petition was denied in *People of Porto Rico* v. *Livingston*, 284 U. S. 642. The question was presented to the court in this language:

> "Does the grant of jurisdiction to the United States District Court for the District of Porto Rico under that provision of Section 41 of the Organic Act for Porto Rico, defining the jurisdiction of the Federal District Court as including 'controversies',
>
> 'where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico,'
>
> extend to an action or suit brought by the *quasi*-sovereign People of Porto Rico itself, in its own courts, for the recovery of lands situated within its territory, so as to authorize the defendant to remove such an action to the federal court?" (Petition for certiorari, No. 241, October Term, 1931, pp. 1, 2).

Respectfully submitted,

FRANCIS E. NEAGLE,
Attorney for Respondents.